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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 19 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:)
)
Petition of the People of the)
State of California and the)
Public Utilities Commission of)
the State of California to)
Retain Regulatory Authority of)
Intrastate Cellular Service Rates)

94-105
PR File No. 94-SP3

To: The Commission

COMMENTS OF CELLULAR RESELLERS ASSOCIATION, INC.
CELLULAR SERVICE, INC. AND COMTECH, INC.

Cellular Resellers Association, Inc. ("CRA"), Cellular Service, Inc. ("CSI"), and ComTech, Inc. ("ComTech") hereby file comments in support of the Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain State Regulatory Authority over Intrastate Cellular Service Rates ("Petition").

CRA is a California non-profit state association of cellular resellers which has been active in proceedings before the California Public Utility Commission ("PUC") with respect to matters involving regulation of cellular service in general and cellular resale in particular.¹ CSI, a CRA member, has been a cellular reseller in Southern California since 1984 and has also participated in PUC cellular proceedings. ComTech, another CRA member, has been a cellular reseller in Northern California since 1984 and has similarly participated in PUC proceedings concerning cellular service.

¹ Over 70 entities hold certificates of public convenience and necessity as cellular resellers in California.

CRA, CSI and ComTech wish to emphasize the critical importance which grant of California Petition has to the survival of cellular competition in California. Indeed, given that importance, denial of the Petition would be inconsistent with the amended Section 332 of the Communications Act of 1934 ("Act"), 47 U.S.C. § 332, and the Commission's professed desire to promote competition in the mobile communications market.

Section 332(c)(3) of the Act, 47 U.S.C. § 332(c)(3), provides that a state may retain authority over rates for commercial mobile service if, inter alia, "market conditions with the respect to such service have failed to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory. . . ." The Petition demonstrates that (1) market conditions would result in unreasonable and discriminatory rates and (2) the current FCC-licensed cellular duopoly must be subjected to continued state regulation in California until a more competitive marketplace can emerge.

CRA, CSI and ComTech can attest to the validity of the Petition's findings and conclusions. To date, CRA's members, including CSI and ComTech, have provided the only meaningful competition to the FCC-licensed cellular carriers. However, as demonstrated in the Petition, that additional competition has proven insufficient to overcome the market power of the FCC-licensed cellular carriers. But even that limited competition provided by cellular resale in California would evaporate

overnight if California were denied the right to continue its regulation over cellular rates.

Of particular significance to CRA's members are policies, regulations and decisions which require the establishment of wholesale rates to be made available to cellular resellers like CSI and ComTech. CRA's members operate with extremely small profit margins -- in some cases as low as one percent (1%). If CRA's members, like CSI and ComTech, were deprived of lower wholesale rates, their profit margins would disappear and their ability to survive placed in serious jeopardy. Their ability to provide rates and service competition to California consumers would likewise be undermined.

The California PUC has already encountered and resolved a number of complaints in which the FCC-licensed cellular carriers have attempted to avoid compliance with the wholesale margin requirements of California regulations. There is no doubt that, without the oversight of the California PUC, the FCC-licensed cellular carriers would immediately eliminate the availability of those wholesale rates.


The Commission has long recognized the value of cellular resale in providing competition to the FCC-licensed cellular carriers. See Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, FCC 94-145 (July 1, 1994) at ¶ 138, citing Cellular Resale Order, 7 FCC Rcd 4006, 4007 (1992). That finding -- and the Commission's commitment to promote competition in the mobile communications market in the

short run as well as in the long run -- therefore require a grant of California's Petition.


WHEREFORE, in view of the foregoing, it is requested that the Commission grant the Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of September, 1994, I caused a true copy of the foregoing Comments of Cellular Resellers Association, Inc. to be sent via first class mail, postage prepaid, to the following:

Peter Arth, Jr., Esq.
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Jo Ann Waters